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REGISTRATION NO. 15040  
SEP 2 1986 3 10 PM

INTERSTATE COMMERCE COMMISSION

August 29, 1986

Secretary  
Interstate Commerce Commission  
Constitution Avenue and  
12th Street, N.W.  
Washington, DC 20423

Attn.: Recordation Unit

9/2/86  
Date  
Fee \$ 10.00  
ICC Washington, D. C.

Gentlemen:

Enclosed for filing and recording under 49 U.S.C. §11303(a) and the regulations promulgated thereunder are an original and one executed counterpart of a Security Agreement by and among HM Joint Venture and the First National Bank of Louisville dated August 22, 1986, which is a primary document and has not been previously filed. The names and addresses of the parties to the Security Agreement are as follows:

Debtor:

HM Joint Venture  
1 Embarcadero Center  
San Francisco, CA 94111

Secured Party:

First National Bank of Louisville  
P.O. Box 36040  
Louisville, KY 40232

The Security Agreement covers certain bottom dump coal hopper railroad cars described as follows:

940 bottom dump coal hopper railroad cars numbered HELX 36000 - 37199, inclusive; and

1,300 bottom dump coal hopper railroad cars numbered HELX 580000 - 581999, inclusive;

AAR mechanical designation: HK.

Secretary  
Interstate Commerce Commission:  
Page 2  
August 29, 1986

Please cross-index the Security Agreement with that certain Memorandum of Lease of Railroad Equipment dated August 25, 1986, by and between HM Joint Venture and CSX Transportation, Inc., filed simultaneously herewith and enclosed in the envelope containing the Security Agreement.

A short summary of the documents to appear in the Index is as follows:

940 bottom dump coal hopper railroad cars  
numbered HELX 36000 - 37199, inclusive; and

1,300 bottom dump coal hopper railroad cars  
numbered HELX 580000 - 581999, inclusive.

Also enclosed is a draft in the amount of \$10.00 representing the required recordation fee for filing the Security Agreement.

Once the filing has been made, please return to the undersigned a stamped counterpart of the Security Agreement, together with the fee receipt, the letter from the ICC acknowledging the filing, and an extra copy of this letter of transmittal.

Very truly yours,



Robert F. Hochwarth

RFH:awc  
(Enclosure)

Interstate Commerce Commission

Washington, D.C. 20423

9/3/86

OFFICE OF THE SECRETARY

Robert F. Hochwarth  
Senior Gen. Atty.  
100 North Charles St.  
Baltimore, MD. 21201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/2/86 at 3:10pm, and assigned re-recording number(s). 15040 & 15041, 15041-A

Sincerely yours,

*Norata R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

15040

Filed 1425

SEP 2 1986 3 10 PM

INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT

by and among

HM JOINT VENTURE

and

FIRST NATIONAL BANK OF LOUISVILLE

August 22, 1986

## Security Agreement

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SECURITY AGREEMENT

List of Exhibits

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### SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of the 22<sup>nd</sup> day of August, 1986, between HM JOINT VENTURE, a joint venture organized under the laws of the State of California (herein the "Debtor") and consisting of Helm Equipment Leasing Corporation, a California Corporation and Mansbach Realty Company, Inc., a Kentucky Corporation (herein "Mansbach") and FIRST NATIONAL BANK OF LOUISVILLE, NATIONAL BANKING ASSOCIATION with its principal office located in Louisville, Kentucky (the "Secured Party").

To secure the due and punctual payment of all principal, interest and other terms payable under the terms of two promissory notes, the first being a Nonrecourse Promissory Note dated as of 22<sup>nd</sup> August, 1986 from Debtor to Secured Party to evidence advances from Secured Party to Debtor up to Ten Million (\$10,000,000) Dollars ("Term Note A") and the second being a Promissory Note dated August 22, 1986, from Mansbach to Secured Party to evidence advances from Secured Party to Mansbach up to Three Million (\$3,000,000) Dollars ("Term Note B") to finance services which Mansbach has agreed to provide to Borrower (the Debtor's Nonrecourse Promissory Note and Mansbach's Promissory Note are referred to hereinafter collectively the "Notes"), and any and all other promissory notes hereafter at any time issued in replacement or extension thereof by Debtor or Mansbach, and to secure Debtor's and Mansbach's obligations thereunder and hereunder, Debtor hereby assigns, transfers, mortgages and pledges

to the Secured Party and grants to the Secured Party a security interest in the following described collateral and in all proceeds thereof (the "Collateral"):

1. All of the Debtor's right, title and interest in and to:
  - (a) that certain Car Leasing Contract dated July  
30, 1986 (the "Car Contract") in which CSX Transportation, Inc. is the Lessee (the "Lessee") and the Debtor is the Lessor, a copy of which is annexed hereto as Exhibit A, (b) that certain Lease of Railroad Equipment, dated as of August 1, 1986 (the "Term Lease") in which the Lessee is Lessee and Debtor is Lessor (the Car Contract and Term Lease may be referred to collectively hereinafter as the "Lease") and (c) all rentals and other moneys payable under the Lease including all proceeds of insurance, condemnation and requisition proceedings and sales or other dispositions of the property subject thereto and all the Debtor's rights, power and remedies therein and thereunder (but none of its duties or obligations thereunder, if any), including, without limitation, all the Debtor's rights to give and receive any notice, consent, waiver, demand or approval under or in respect of such Lease, to exercise any election or option thereunder or in respect thereof, to accept any surrender of the property subject to the Lease, to execute and deliver any bill of sale



for any such property, and to do all other things which the Debtor is entitled to do under such Lease;

2. All the equipment listed on Schedule I attached hereto now owned or hereafter acquired by Debtor (the "Equipment"), which Equipment has been or is being acquired by Debtor for lease to the Lessee pursuant to the Lease, and all the Debtor's right, title and interest in the Equipment and in all parts, fittings, accessories, accessions, substitutions and replacements therefor or thereof, and all contract rights, chattel paper, accounts, rentals, fees, income and proceeds arising from and in connection with the use of the Equipment.
3. All instruments of sale and purchase entered into between Debtor as purchaser and Missouri Pacific Railroad or Union Pacific Railroad in the form of Sale Orders or purchase contracts, bills of sale or otherwise evidencing Debtor's rights to acquire the Equipment.

In furtherance of the foregoing, Debtor has executed an Assignment of Lease (the "Lease Assignment"), dated as of the date hereof and annexed hereto as Exhibit B. The Debtor hereby irrevocably constitutes and appoints Secured Party as the Debtor's attorney-in-fact, with full power of substitution and revocation, in the

name of the Debtor or otherwise to demand, enforce, collect, or receive and receipt and give releases for any payment or indemnity becoming due or arising under the Lease or any policy of insurance relating to the Equipment or any Collateral (including any return of insurance premiums), to endorse and collect any checks, drafts or other instruments payable to the Debtor therefor, and to do and take all such other actions as are referred to above relating to the Lease, the Equipment or other Collateral, to file any claims or institute any proceedings for the foregoing which Secured Party deems necessary, and to compromise any such demand, claim or action; provided, however, that Secured Party hereby agrees with Debtor that Secured Party shall not as long as no Event of Default (as hereinafter defined) or other event which with the giving of notice or the lapse of time or both could become an Event of Default under the Lease or this Agreement shall have occurred and be continuing, without the written consent of the Debtor, seek to enforce any of the rights, powers or remedies of Secured Party under the Lease.

So long as any amount remains outstanding under the Notes, without Secured Party's prior written consent, which shall not be unreasonably withheld the Debtor shall not grant any consent or waiver under the Lease, give any notice thereunder or otherwise exercise any rights, powers or remedies of the Lessor thereunder (except as permitted by the next paragraph hereof), or agree to any release of any obligation of the Lessee thereunder or to any

amendment, modification or termination thereof. At any time after an Event of Default has been declared hereunder and is continuing, Debtor hereby consents to and does hereby waive notice of the granting by Secured Party as assignee of indulgences to Lessee or extensions of time for payment of any obligations of Lessee under the Lease, Secured Party's taking or releasing of any security for the obligations of the Lessee under the Lease, Secured Party's acceptance of partial payments on the Lease or settlement, compromising or compounding of any obligations of any person, primarily or secondarily liable on or with respect to the Lease, all in such manner and at such time or times as Secured Party may reasonably deem advisable.

In the event that the Lessee shall be in breach of any of its covenants or agreements contained in the Lease and the Secured Party, after not less than 20 days written notice thereof from Debtor, does not seek to collect that portion of any payment which would otherwise be payable to the Debtor pursuant to Paragraph G hereof or to enforce any such covenant and agreement, Debtor shall have the right, for only so long as no Event of Default under the Lease or this Agreement shall have occurred and be continuing, to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such covenants or agreements and to recover damages for the breach thereof; provided, however, that without the prior written consent of the Secured Party, the Debtor may not declare an Event of Default

under or terminate the Lease; provided, further, that the exercise of Debtor's rights to enforce performance or to recover damages from the Lessee shall always be subject to the rights of the Secured Party under the Lease Assignment and this Agreement.

A. REPRESENTATIONS, WARRANTIES AND AGREEMENTS - Debtor represents, warrants and agrees that:

1. the Lease provides for the payment, on or before the installment payment dates of the Notes, of rentals in amounts at least equal to the amounts of such installments of principal and interest under the Notes. The counterpart of the Lease designated as chattel paper under the Uniform Commercial Code, Counterpart No. 1, has been delivered to Secured Party and separate, fully executed counterparts of the Lease, this Security Agreement and the Lease Assignment have been delivered to the Secretary of the Interstate Commerce Commission in Washington, D. C. in proper form for recordation pursuant to 49 U.S.C. § 11303;
2. the Debtor has good and marketable title to the units of Equipment listed on Schedule I hereto, free and clear of all liens, claims and encumbrances, subject only to the rights of the sellers thereof to deferred installments, of not more than \$100.00 per each unit acquired from

Missouri Pacific Railroad, if any, to interests therein of the Lessee under the Lease, to persons claiming under or through the Lessee which Lessee is obligated to discharge under the Lease, or to the Secured Party hereunder;

3. the Debtor has filed all tax returns, federal, state, municipal or otherwise, required of the Debtor and is not in default in respect of the due and punctual payment of any taxes payable by Debtor; and no liens for nonpayment of taxes by Debtor exist upon any property, including the Equipment, or other assets of Debtor;
4. the Debtor has not executed any other assignment of the Lease; and the Debtor's right to receive any payments under the Lease and the Debtor's right, title and interest in and to the Equipment, the Lease and the other Collateral are, and will continue to be, free and clear of any and all liens, agreements or encumbrances, which rights shall be terminated in connection with the financing of the Equipment by Secured Party, this Agreement and the rights of the Lessee under the Lease and of persons claiming under or through the Lessee which Lessee is obligated to discharge under the Lease; the Debtor has received no advance rental or other payments under the Lease and the Debtor will not accept

any payments under the Lease for the Debtor's own account except as permitted in this Agreement; the Debtor has performed all obligations on the Debtor's part to be performed under the Lease on or prior to the date hereof and will perform any such obligations during the term of the Lease; and to the knowledge of the Debtor, there has not occurred on the date hereof any Event of Default or other event which after notice of lapse of time or both would become an Event of Default under the Lease or this Agreement;

5. the acquisition and leasing of the Equipment by the Debtor to the Lessee pursuant to the Lease and the making and performance of this Agreement by the Debtor will not violate any provision of law or of any industry rule applicable to either Debtor or Lessee; the condition of the Equipment at the time it is accepted by the Lessee pursuant to the Car Contract is in compliance with all provisions of law (including without limitation the Railroad Freight Car Safety Standards promulgated by the Federal Railroad Administration) and with all industry rules applicable to the Equipment for use by the Lessee; and the making and performance by the Debtor of the Lease and this Agreement will not constitute a default under or resulting in the creation of any lien, charge or encumbrance upon any property or assets of the

Debtor pursuant to any agreement, indenture or other instrument to which the Debtor is a party or by which the Debtor may be bound;

6. there are no actions, suits or proceedings pending or, to the knowledge of the Debtor, threatened against or affecting the Debtor in any court or by or before any government department, agency or instrumentality in which any adverse decision might materially affect the ability of the Debtor to perform the Debtor's obligations under this Agreement, the Lease and the Lease Assignment;

7. without Secured Party's prior written consent so long as either Note remains unpaid, Debtor will not (i) grant any consent under the Lease, (ii) give any notice thereunder or otherwise exercise any rights, powers or remedies of the Lessor thereunder, or (iii) agree to any release of any obligation of the Lessee thereunder or to any modification or any termination thereof; and

8. Debtor is not subject to the jurisdiction of the Interstate Commerce Commission.

B. DOCUMENTATION - The Debtor will execute and deliver to Secured Party such documents identifying the Equipment as

Secured Party may from time to time reasonably request. In addition, the Debtor will execute, acknowledge, deliver, file and record all such documents, including financing statements, and take all such other action as Secured Party may reasonably request, to perfect and continue perfected under applicable laws the security interests granted hereby as first perfected security interests in the Collateral, and the Debtor hereby irrevocably constitutes and appoints Secured Party the Debtor's attorney-in-fact for such purposes, with full power of substitution. The Debtor also will execute and deliver such instruments and take all such other action as Secured Party may reasonably request to effectuate the purposes of this Agreement and to secure the rights and remedies conferred upon Secured Party hereunder.

C. DEFAULT - Each of the following will constitute an event of default hereunder ("Event of Default"):

1. the failure by Debtor or Mansbach to pay any amount of principal of or interest on the Notes when due, whether at the maturity thereof or by reason of any requirement for the prepayment thereof, by acceleration or otherwise, and such failure shall continue for ten (10) days after Secured Party shall have given the Debtor written notice thereof;



2. the failure by Debtor or Mansbach to pay any other amount when due hereunder or perform any other obligation required by this Agreement, either Note or the Lease Assignment, and such failure shall continue for twenty (20) days after Secured Party shall have given the Debtor written notice thereof;
3. the occurrence of an Event of Default under the Lease (as defined therein); provided, however, that if an Event of Default as defined in Paragraph 12(c) of the Term Lease shall occur by reason of Lessee's default in the observance on performance of any of the covenants, conditions and agreements on the part of Lessee contained in Paragraphs 7 or 10 of the Term Lease, Secured Party shall give thirty (30) days written notice of such default to Debtor and Debtor shall have the right, but not the obligation, to cure such default within such thirty-day period; provided, further, that Debtor shall not be entitled to exercise its rights to cure an Event of Default under the foregoing proviso on more than three occasions during the term of the Term Lease;
4. the adjudication of Debtor as bankrupt or insolvent, or the entry of an order appointing a receiver or trustee for the Debtor or any of the Debtor's property or

approving a petition seeking reorganization, plan of arrangement, composition, adjustment of the debts, receivership, liquidation or dissolution of such Debtor or any similar proceeding under the Bankruptcy Code or any similar law of the United States or any state or other competent jurisdiction, or the filing by Debtor of a petition or answer seeking or consenting to any of the foregoing, or the filing of a petition against the Debtor seeking any of the foregoing which is not dismissed within sixty (60) days, or the making by any Debtor of a general assignment for the benefit of creditors; or

5. the occurrence of a breach of any of the Representations, Warranties and Agreements under Paragraph A hereof and such breach is not cured within twenty (20) days after Secured Party shall have given the Debtor written notice thereof.

D. REMEDIES - At any time after the occurrence of an Event of Default and while the same remains uncured, Secured Party may declare, by written notice to the Debtor, the entire unpaid balance of the principal of Debtor's Note and Mansbach's Note and all interest accrued thereon to be immediately due and payable, and, in addition, Secured Party shall have and may exercise all the rights and remedies of a secured party under

the Uniform Commercial Code or other applicable law, including the right to take possession of any Equipment or other Collateral not then in Secured Party's possession and to dispose of it, or the Debtor's interest therein, at public or private sale, at which Secured Party, subject to the provisions of applicable law, may be the purchaser.

Any notice of any such sale required by law shall be deemed reasonably and sufficiently given to the Debtor if given at least fifteen (15) days prior to the date thereof at the address and in the manner herein provided for notices. The proceeds realized by the Secured Party upon the exercise of any of its remedies shall be applied to the obligations secured by this Agreement in accordance with the provisions of Paragraph H and Debtor will be entitled to any surpluses thereafter. No delay or omission on Secured Party's part to exercise any right hereunder will impair any such right or be construed as a waiver of any default or any acquiescence therein.

No waiver of any default hereunder will affect any later default or impair any of Secured Party's rights hereunder. No single, partial or full exercise of any rights by Secured Party will preclude further or other exercise thereof. The remedies provided for herein shall not be deemed exclusive,

but are cumulative and in addition to all other remedies available under applicable law.

Secured Party understands and agrees that neither Debtor nor either of its constituent partners shall be personally liable for the payment of either Term Note A or, except as applies to Mansbach, Term Note B or the indebtedness evidenced thereby and that any judgment entered against the Debtor in any action for the recovery of the amounts due and payable under the Term Note A shall be satisfied out of the proceeds of the Collateral. Nothing contained herein, however, shall (i) preclude Secured Party from exercising any right or enforcing any remedy, whether upon default or otherwise, under Term Note B or under any applicable Guaranty Agreement or Purchase Agreement against Mansbach individually, or under this Agreement against the Collateral furnished as security for the indebtedness evidenced by both Term Note A and Term Note B, or (ii) prejudice the right of the Bank to proceed against the Borrower or either of its constituent partners to recover any damages resulting from the breach of any representation, warranty, agreement or covenant contained in this Agreement or in any other of the Collateral Documents or in any document or instrument provided to Bank in connection with the transactions evidenced hereby or from any fraudulent or willful misconduct on the part of the Borrower or either of its constituent partners with regard to the purchase,

rehabilitation and leasing of railroad equipment to Lessee, provided however, nothing in this clause (ii) shall authorize Bank to collect damages from one constituent partner of Borrower as a result of any breach or of any fraudulent or willful misconduct committed by the other constituent partner, or (iii) prejudices the right of the Secured Party to pursue any subsequent owner of any of the Collateral should any of such Collateral be mortgaged, pledged, assigned or otherwise conveyed in violation of any covenant contained in this Agreement.

- E. PREPAYMENT OF NOTES UPON CASUALTY OCCURRENCE - If any amount shall become due and payable to the Debtor or the Secured Party as Assignee pursuant to the Lease because of a Casualty Occurrence (as defined in the Term Lease) or pursuant to Paragraph 9 of the Car Contract, with respect to any units of Equipment ("Casualty Value"), then, thereupon, an amount, computed as hereinafter set forth, will be due and payable on the Notes as of the date the Casualty Value is due and payable under the Lease. The Secured Party will accept all sums paid to it pursuant to Paragraph 8 of the Term Lease or Paragraph 9 of the Car Contract with respect to Casualty Occurrences of Equipment and, unless an Event of Default or event which with the lapse of time or the giving of notice or both would become an Event of Default under this Agreement or under the Lease shall have occurred and be continuing (in

which event all such amounts shall be applied by Secured Party against obligations of the Debtor or Mansbach then remaining), shall apply such sums in reduction of Debtor's and Mansbach's obligations to Secured Party with the balance, if any, paid to Debtor in the following manner: (i) first, Secured Party shall apply so much of the Casualty Value received as shall be necessary to pay any expenses or fees which have accrued and are then payable pursuant to Paragraph F, infra; (ii) next, Secured Party shall apply to Term Note A out of the balance, if any, an amount equal to the then existing balance of principal and accrued interest on Term Note A divided by (X-N); (iii) next, Secured Party shall apply to Term Note B (if said note has not been previously repaid) out of the balance, if any, an amount equal to the amount Mansbach expended to refurbish and repair the unit of Equipment prior to the commencement of the Term Lease plus interest accrued on such amount at the rate set forth in Term Note B; and, (iv) finally, Secured Party shall remit the balance, if any, to Debtor. For purposes of this Paragraph E, "X" shall equal the number of units of Equipment originally accepted by Lessee for purposes of the Car Contract or the Term Lease, as the case may be, and "N" shall equal the number of units of Equipment previously removed from service under the Car Contract or the Term Lease as the case may be. Amounts withheld to be applied against Term Note A and Term Note B shall be applied solely in accordance

with the prepayment provisions of those Notes and any discrepancy between the provisions of this Paragraph E and the prepayment provisions of either Note shall be resolved in favor of the prepayment method described in the Note. The records maintained by Mansbach shall be used to determine the amount Mansbach spent to refurbish and repair each unit of Equipment prior to acceptance thereof by Lessee for purposes of the Term Lease.

- F. COLLECTION EXPENSES - In addition to all other amounts payable hereunder and under the Notes, the Debtor will pay all Secured Party's reasonable expenses, including attorneys' fees, incurred from time to time in enforcing its rights and remedies hereunder, under the Notes or under the Lease. If Secured Party brings suit (or files any claim or petition in any bankruptcy, reorganization, insolvency or other proceeding) to enforce any of its rights (or other recovery or relief), Secured Party may recover in such action (or other proceeding), in addition to all other amounts payable hereunder and thereunder, its reasonable expenses, including attorneys' fees, in connection therewith, and the same shall be included in such judgment (or other form of award).
- G. COLLECTION OF RENTALS - Secured Party will, on behalf of Debtor, collect and receive from the Lessee all rentals and other money payable pursuant to the Lease. The Secured

Party, except as otherwise provided in this Agreement, may take all such action as may be necessary or desirable to demand, enforce, collect, receive and receipt for all such payments and otherwise enforce compliance by Lessee with all terms and provisions of the Lease. To the extent indefeasibly received, the Secured Party will apply such payments first, in the manner specified in Paragraph H hereof, and second, so long as no Event of Default or event which with the lapse of time or the giving of notice or both provided for in the Lease or hereunder could constitute an Event of Default thereunder or hereunder shall have occurred and be continuing, any balance shall be paid to the Debtor. All payments received by Secured Party at such time as an Event of Default shall have occurred and be continuing which otherwise, in whole or in part, would be remitted to Debtor as aforesaid shall be retained by Secured Party and applied to satisfy Debtor's and Mansbach's obligations under the Notes and this Agreement. All payments received by Secured Party at such time as there shall have occurred an event which with the lapse of time or the giving of notice or both provided for in the Lease or hereunder could constitute an Event of Default thereunder or hereunder which otherwise, in whole or in part, would be remitted to Debtor as aforesaid shall be retained by Secured Party until such event shall either become an Event of Default (in which case such monies shall be applied as aforesaid), or be cured or otherwise not



be capable of maturing into an Event of Default (in which case such monies shall be remitted to Debtor as aforesaid). The Debtor agrees that any payments received by the Debtor from the Lessee which are payable to the Secured Party pursuant to this Agreement shall be held in trust for the Secured Party and shall be immediately paid to the Secured Party.

H. APPLICATION OF OTHER PAYMENTS - All payments other than payments in respect of Casualty Occurrences indefeasibly received by the Secured Party in respect of the Lease shall be applied, first, to the payment of costs and expenses due to the Secured Party pursuant to Paragraph F, if any, and second, to the payment of accrued but unpaid interest, principal and other amounts then due and owing, if any, under Term Note A, and third, to the payment of accrued but unpaid interest and principal, if due and owing, on Term Note B. Payments indefeasibly received by Secured Party in excess of the amounts necessary to satisfy Debtor's and Mansbach's obligations then due and payable as aforesaid shall within five (5) business days be released to Debtor.

I. MULTIPLE NOTES - If more than one Note is outstanding at the time any application of payments is made pursuant to Paragraphs E and H hereof, the application shall be made on all outstanding Notes ratably in accordance with the

principal amount remaining unpaid thereon and on the installments of each Note, respectively.

- J. NOTICES - All notices, declarations, requests, consents and other communications given hereunder or in connection herewith or with the Notes shall be in writing and shall be deemed to have been given when delivered or deposited in the United States mail, registered or certified, postage prepaid, addressed to Debtor, care of Helm Equipment Leasing Corporation, One Embarcadero Center, Suite 3320, San Francisco, California 94111 and to the Secured Party at its address stated below, or to such other address as any such party may hereafter specify by written notice to the other.
- K. OTHER AGREEMENTS - All references in this Agreement to obligations of Debtor pursuant to this Agreement or payments required to be made pursuant to this Agreement shall for all purposes include, regardless of whether expressly stated, the obligations of the Debtor and Mansbach for payments required by the Debtor pursuant to the Lease Assignment.
- L. APPLICABLE LAW - this Agreement and the Notes shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Kentucky.

- M. SEVERABILITY - Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- N. SUCCESSORS AND ASSIGNS - This Agreement will bind and inure to the benefit of the respective successors and assigns of the parties hereto, including any holder, as such, of any Note, by acceptance of an assignment hereof or of any Note. Each of the Secured Party's successors or assigns (including any holder, as such, of any Note) will be deemed to have agreed to be bound by the provisions hereof, and of the Notes and Secured Party's undertakings hereunder and thereunder.
- O. TRANSFER OF DEBTOR'S INTEREST - The Debtor shall not assign, convey or otherwise transfer any of its right, title or interest in, to or under any of the Collateral without the prior written consent of the Secured Party in its discretion and subject to such terms and conditions as the Secured Party may then specify.

P. TERMINATION OF SECURITY INTEREST, ETC. - Upon payment in full of the principal of and interest on the Notes and all other sums payable to the Secured Party under the Notes and this Agreement, the Secured Party shall execute and deliver to the Debtor, at the expense of the Debtor, such documents as the Debtor shall reasonably request to evidence the termination of this Agreement and the Lease Assignment and all interests of the Secured Party in this Collateral.

IN WITNESS WHEREOF, this Security Agreement has been duly executed and delivered as of the date first above written.



[Corporate Seal]

By: William M. Peterson

Title: SECRETARY

SEAL

Attest:

By: Charles D. Barnett

Title: Secretary

HM JOINT VENTURE,  
a California joint venture

By: Helm Equipment Leasing  
Corporation,  
a general partner

By: W. R. Edwards

Title: Executive Vice President

and

By: Mansbach Realty Company,  
a general partner

By: Lucy Mansbach

Title: President

FIRST NATIONAL BANK OF LOUISVILLE

By: J. E. Vittitow

Title: Senior Vice President

Addresses for notices:

First National Bank of Louisville  
P.O. Box 36040  
Louisville, Kentucky 40233  
Attn: Mr. J.E. Vittitow,  
Senior Vice President

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF JEFFERSON )

On this 22 day of August, 1986, before me personally appeared David P. Eckles to me personally known, who being by me duly sworn, says that he is the Exec. V.P. of HELM EQUIPMENT LEASING CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation on behalf of HM Joint Venture.

My commission expires:

1/8/89

(SEAL)

Lee Ann Vittitow  
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY )  
 ) SS.  
COUNTY OF ~~BOYD~~ JEFFERSON )

On this 22 day of August, 1986, before me personally appeared Geoff Handorf to me personally known, who being by me duly sworn, says that he is the President of MANSBACH REALTY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation on behalf of HM Joint Venture.

My commission expires:

1/8/89

(SEAL)

Lee Ann Vittitow  
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY       )  
  ) SS.  
COUNTY OF JEFFERSON           )

On this 22 day of August, 1986, before me personally appeared J.E. Villanow to me personally known, who being by me duly sworn, says that he is the Sr. Vice President of FIRST NATIONAL BANK OF LOUISVILLE, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires:

(SEAL)

1/8/89  
Lee Ann Vignais  
NOTARY PUBLIC

SCHEDULE I

List of Equipment

<u>Existing Car Numbers</u>	<u>Maximum Number of Cars</u>	<u>New Car Numbers</u>
UP 36000 - 37199	940	HELX 36000 - 37199
MP, MI & TP 580000 - 581999	1300	HELX 580000 - 581999

## CAR LEASING CONTRACT

This Car Leasing Contract ("Contract"), dated as of July 30, 1986 is by and between HM Joint Venture ("Lessor") and CSX Transportation, Inc. ("Lessee").

1. The parties are negotiating a Lease of Railroad Equipment of even date (the "Lease"). The parties intend that following the end of the term of this Contract both parties shall cooperate in causing the Cars referred to herein to be readied for delivery and acceptance under the Lease, assuming it has been executed by that time. To that end, Lessee agrees, at its expense and at the reasonable direction of Lessor, and assuming the Lease has been executed at such time, to deliver the Cars to the Mansbach Metal Company facility referred to herein during the period from November 1, 1986 through February 28, 1987 to enable Lessor to make such repairs as are necessary to put the Cars in Good Operating Condition under the Lease. In addition, if Cars are surplus to Lessee's needs at any time during the term of this Contract, Lessee shall deliver such Cars to such facility as promptly as possible consistent with Lessor's ability to commence repairs. Prior to such delivery, Lessee shall store the Cars on its lines at its sole risk and expense.

For purposes hereof:

"Cars" means, collectively, the bottom dump coal hopper railroad cars identified in Schedule A, attached hereto and made a part hereof, as the same may be amended, modified or supplemented in writing from time to time hereunder.

"Good Operating Condition" means that the Cars will be (i) operable in conformity with the Interchange Rules, the requirements of any other governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars and the manufacturer's or Lessee's specifications for the Cars, (ii) acceptable, in Lessee's reasonable judgment, for the use in hauling coal, coke, iron ore, stones or aggregates, (iii) acceptable for interchange use, and (iv) legibly marked with those marks reasonably necessary for purposes of identification to meet AAR or other requirements.

2. Lessor agrees to furnish and lease to Lessee, who agrees to accept and use pursuant to the provisions of this Contract, the hopper cars ("Cars") shown in Schedule A. The



primary use of the Cars is the transportation of coal, iron ore, coke or aggregates.

3. The term of this Contract is from August 1, 1986 through February 28, 1987. If a Car is off the Lessee's lines at the end of the Contract term, Lessee will pay rental until the Car is received empty on its lines.

4. Cars will be delivered to Lessee hereunder at St. Louis, Missouri or other cities agreeable to the parties as soon as practical after execution of this Contract. Lessee will transport the Cars to Ashland, Kentucky at no additional cost for restencilling, inspection and acceptance at the Mansbach Metal Company facility or other mutually agreed upon location, which shall occur as soon as practicable following delivery. Rental payments, as described in paragraph 6, will not begin on each Car until it has been accepted. Acceptance by Lessee shall be evidenced by a joint inspection certificate in the form of Exhibit B attached hereto. Lessor is responsible for any defects noted by Lessee on its acceptance under this Contract prior to acceptance of the Cars in Good Operating Condition, as contemplated in the Lease.

5. Except as expressly set forth herein, Lessee is not responsible for transportation, switching or delivery charges of connecting railroads.

6. Lessee will pay rent of . . . per Car per day beginning with the day of acceptance hereunder for any day any Car is used by Lessee hereunder. Provided only that Lessor is able to deliver and Lessee has accepted at least 1,600 Cars hereunder on or before September 15, 1986, Lessee guarantees an aggregate rental payment hereunder of at least . . . for Car usage through February 28, 1987. Rental payments shall be made on November 1, 1986, February 1, 1987 and April 1, 1987.

7. Lessee is responsible for maintenance and repair of Cars (running and major) during the term of the Contract and thereafter while in its possession, and will return Cars to Lessor at the end of the Contract in the same condition as received, normal wear and tear excepted.

8. Lessor may change the reporting marks of the Cars but will provide Lessee with immediate notice of any such change. Lessor shall collect and credit Lessee for any car hire charges earned for such Cars, when on lines of other railroads. Lessor will not reduce the amount of such car hire charges without the concurrence of Lessee. No car hire charges apply when Cars are on Lessee's lines or those of its CSX Transportation affiliates, B&O and C&O ("Affiliates").

9. If any Car is destroyed or damaged beyond economic

will reimburse Lessor Rental on the Car will terminate on date of notification. Substitution of any replacement Car is subject to the concurrence of both parties.

10. Lessee is responsible for payment of all property, sales, use or similar taxes that are applicable against the Cars.

11. This Contract shall be construed under the laws of the State of Maryland, is based upon the individual credit of each party and may not be assigned without the written consent of the other party. Notwithstanding the foregoing, Lessee may assign this Contract to any of its Affiliates and Lessor may assign this Contract to First National Bank of Louisville.

12. Any notice involving this Contract must be in writing and addressed as follows:

Lessor: c/o Mr. David R. Eckles  
Executive Vice President  
Helm Financial Corporation  
One Embarcadero Center  
San Francisco, CA 94111

Lessee: CSX Transportation, Inc.  
Equipment Group - Treasury  
100 North Charles Street  
Baltimore, MD 21201

with copies, in both cases, to:


First National Bank of Louisville  
P.O. Box 36040  
Louisville, KY 40232  
Attention: Mr. J. E. Vittitow  
Senior Vice President


13. This Contract constitutes the entire understanding of the parties, has been executed by their authorized officials, and may not be modified without the written consent of both parties.

CSX TRANSPORTATION, INC.

HM JOINT VENTURE

By: HELM EQUIPMENT LEASING CORPORATION

By 

By 

SCHEDULE A

<u>Existing Car Numbers</u>	<u>Maximum Number of Cars</u>	<u>New Car Numbers</u>
UP 36000 - 37199	940	HELX 36000 - 37199
MP 580000 - 581999	1300	HELX 580000 - 581999

JOINT INSPECTION CERTIFICATE *EXHIBIT B*

DATE OF DEFECT CARD \_\_\_\_\_ COMPANY ISSUING: \_\_\_\_\_

LOCATION \_\_\_\_\_ DATE OF PREPARATION: \_\_\_\_\_

THE UNDERSIGNED HAVE PERSONALLY INSPECTED (INITIALS) \_\_\_\_\_

CAR NO. \_\_\_\_\_ (KIND) \_\_\_\_\_ AND FIND IT TO BE IN THE FOLLOWING CONDITION

[illegible]

**SIGNATURE:**

INSPECTOR FOR:

**SIGNATURE:**

INSPECTOR FOR:

**RULE 108 HANDLING:**

COMPLETE REPAIRS CAN <input type="checkbox"/> / CANNOT <input type="checkbox"/> BE MADE		NECESSARY <input type="checkbox"/> / NOT NECESSARY <input type="checkbox"/> TO LOAD CAR ON OTHER EQUIPMENT		DATE BUILT:	LIGHTWEIGHT
ESTIMATED COST OF PERMANENT REPAIRS TO BODY ONLY:	LABOR \$	MATERIAL \$	TOTAL \$		
ESTIMATED COST OF TEMPORARY REPAIRS:	LABOR \$	MATERIAL \$	TOTAL \$		

**LEASE OF RAILROAD EQUIPMENT**

LEASE OF RAILROAD EQUIPMENT, dated as of August 1, 1986, between HM JOINT VENTURE, a joint venture organized under the laws of the State of California (hereinafter called the "Lessor"), and CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter called the "Lessee"). The term "Affiliate" as used hereinafter means any parent or subsidiary of the Lessee or any subsidiary of the parent of the Lessee, as presently constituted.

WHEREAS, the Lessor owns or will acquire the Cars more fully described in Schedule A referred to hereinafter (hereinafter the "Cars");

WHEREAS, the Lessor is financing its acquisition of the Cars with First National Bank of Louisville (the "Lender");

WHEREAS, the promissory note issued by the Lessor to Lender in connection with the financing of its acquisition of the Cars evidencing the amount of such financing is secured by the Cars and this Lease pursuant to a Security Agreement and an assignment of the Lease (the "Lease Assignment") (the Security Agreement and the Lease Assignment being herein called, collectively, the "Security Documents"), Lessee having consented and agreed to such assignment pursuant to a certain Consent and Agreement (the "Consent and Agreement"); and

WHEREAS, the Lessee desires to lease from the Lessor all the Cars at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Cars to the Lessee upon the following terms and conditions:

1. Definitions. In this Agreement, unless the context

otherwise requires:

(a) "AAR" means the Association of American Railroads or any successor organization having similar functions with respect to the establishment of maintenance standards for railroad cars.

(b) "Interchange Rules" means the Field Manual of the Interchange Rules adopted by the AAR or any successor publication issued by the AAR to replace such Interchange Rules, in effect from time to time during the term of this Agreement.

(c) "Cars" means, collectively, the bottom dump coal hopper railroad cars identified in Schedule A, attached hereto and made a part hereof, as the same may be amended, modified or supplemented in writing from time to time hereunder.

(d) "Effective Date" means with respect to each Car the later of the date of delivery and acceptance hereunder, or March 1, 1987.

(e) "FRA" means the Federal Railway Administration or any successor having similar jurisdiction.

(f) "Good Operating Condition" means that the Cars will be (i) operable in conformity with the Interchange Rules, the requirements of any other governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars and the manufacturer's or Lessee's specifications for the Cars, (ii) acceptable, in Lessee's reasonable judgment, for the use in hauling coal, coke, iron ore, stones or aggregates, (iii) acceptable for interchange use, and (iv) legibly marked with those marks reasonably necessary for purposes of identification to meet AAR or other requirements.

(g) "Repair Shop" means the railcar maintenance facility of Mansbach Metal Company, Ashland, Kentucky.

2. Delivery and Acceptance of Cars. Lessor agrees to deliver not less than 1,900 Cars in Good Operating Condition. The Lessee hereby agrees to accept, as evidenced by the execution of a joint inspection certificate in the form of Exhibit C attached hereto, all Cars delivered to it which are in Good Operating Condition. Cars shall be delivered to Lessee at the Repair Shop or at such other location as may be agreed to by the parties hereto in Good Operating Condition and shall be promptly accepted or rejected as shown on the joint inspection certificate, with reasons for rejection in reasonable detail. Cars shall not be delivered by Lessor prior to March 1, 1987 but at least 1,600 Cars shall be delivered in Good Operating Condition by that date with the balance to be delivered by Lessor in Good Operating Condition by June 1, 1987. From acceptance, each Car shall be subject thereafter to all terms and conditions of this Lease. The

Lessor warrants that it has good title to each Car free and clear of any liens and encumbrances, except that of the Lender under the Security Documents, and has authority to enter into and perform this Lease.

Lessor agrees to maintain and repair the Cars pursuant to paragraph 10 hereof so that no more than 250 Cars of the total Cars accepted by Lessee are at any time unavailable for Lessee's use hereunder; provided, however, that Cars which would be available for such use except for the necessity of repairs which Lessor is not responsible to make hereunder shall be counted as available for Lessee's use for the purposes of the foregoing agreement.

3. Car Hire Earnings. Upon acceptance of the Cars as set forth in paragraph 2 hereof, with reporting marks on each Car as set forth in paragraph 6 and Schedule A hereto, Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. Lessor shall remit all car hire earnings on the Cars to the Lessee within 15 days after payments are received by Lessor. In the event Lessor cannot collect any car hire earnings from the responsible party it will assign to Lessee its rights to collect such car hire earnings and Lessor shall cooperate with Lessee in facilitating Lessee's collection of such car hire earnings. Lessor will not reduce the amount of such car hire charges without the concurrence of Lessee.

In the event the Lessor shall be in default in the payment to the Lessee of car hire earnings collected by the Lessor, the Lessor shall pay the Lessee, as additional earnings, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessor at a rate equal to 13% per annum.

4. Rentals. The Lessee agrees to pay the Lessor rental for each Car subject to this Lease in ten (10) semiannual installments, payable in advance on July 1 and January 1 of each year, beginning July 1, 1987 with appropriate prorations for any partial periods. Each semiannual payment shall be in the amount of        each per Car, except for the final such payment which shall be        each per Car. In addition, the Lessee agrees to pay the Lessor interim rental as follows:

On March 1, 1987,        per Car for all Cars accepted as of such date; and

On July 1, 1987, the daily rate of        per Car for the period from the Effective Date for each Car through June 30, 1987.

In addition, Lessee will pay Lessor on a quarterly basis for

all Lessee responsible repairs. Bills will be submitted for the periods ending March 1, June 1, September 1, and December 1 of each year, with payment to be made within sixty (60) days of receipt of the invoice.

In addition, as a Contingent Mileage Fee, Lessee shall pay Lessor two (2) cents per mile for every mile over 25,000 that any Car is used in each twelve-month period beginning June 1 of each year. Within thirty (30) days of the end of each such twelve-month period, Lessor shall submit to Lessee an invoice setting forth the Contingent Mileage Fee for the previous twelve-month period and Lessee shall pay to Lessor the Contingent Mileage Fee so invoiced within sixty (60) days of its receipt of the invoice. All sums shall be appropriately prorated for any partial periods.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to 13% per annum.

This Lease is a lease which includes maintenance, however the Lessee shall not be entitled to any abatement of rent (except for prepaid rent not earned as a result of abatement pursuant to the fourth subparagraph of paragraph 10(c) hereof, which Lessee may credit against rent payable thereafter), reduction thereof or set-off against rent, including, but not limited to, abatements, reductions, setoffs, or any charges for services rendered pursuant to paragraph 10(f) hereof, due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Cars from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Cars, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Cars except in accordance with the express terms hereof.



Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

Notwithstanding the provisions of the immediately preceding paragraph, nothing herein shall eliminate Lessor's responsibility hereunder, if any, to the Lessee for monetary damages in the event that it shall fail to perform any of its obligations under this Lease, subject, however, to all prior rights and remedies of the Lender and its assigns under the Lease and the Security Documents.

5. Term of Lease. The term of this Lease with respect to each Car shall begin on the Effective Date and, unless sooner terminated in accordance with the provisions of the Lease, shall end on the last day of May, 1992.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraph 7, 10 and 12 hereof) shall survive the expiration or sooner termination of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Cars are subject to the rights of the Lender under the Security Documents. If any event of default should occur under the Security Documents, the Lender may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and Agreement and (iii) the Lender is entitled to apply the "income and proceeds from the Equipment" (as defined in the Security Agreement) in accordance with the Security Documents, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under Paragraph 14 hereof. Lessor covenants that Lessee shall lawfully, peaceably and quietly hold, possess and enjoy the Cars covered by this Lease, without any hindrance, dispossession or interference by Lessor or any one lawfully claiming by, through or under Lessor, except pursuant to the provisions of this Lease.

6. Identification Marks. The Lessee will cause each Car to be kept numbered with the identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Car in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated

by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the Lender and the rights of the Lessor and the Lender under the Lease. The Lessee will not place any such Car in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Car to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership.

7. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the terms of the Security Documents), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Car or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Car free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Car (hereinafter called Impositions); provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any Impositions so paid unless the Lessor shall have been legally liable with respect thereto, or unless the Lessee shall have approved the payment thereof. Provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is

contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of Lessor, adversely affect the property or rights of the Lessor in or to the Cars or otherwise under this Lease. Lessor recognizes all statutory exemptions from sales or use taxes available to Lessee, as well as Direct Pay Authorizations issued to Lessee.

Lessee agrees to and does hereby indemnify Lender with respect to Impositions to the same extent as Lessor is indemnified under this Paragraph 7. Accordingly, the term "Lessor", as used in this Paragraph 7, shall be read as "Lessor and/or Lender" as is appropriate in the context in which it is used.

In the event any reports with respect to Impositions are required to be made on the basis of individual Cars the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Cars or will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this Paragraph 7, such liability shall continue, notwithstanding the expiration or sooner termination of the term of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

The amount which the Lessee shall be required to pay with respect to any Imposition which is subject to indemnification under this Paragraph 7 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such Imposition not been imposed.

8. Casualty Occurrence. In the event that any Car shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable for use from any cause whatsoever, while on Lessee's or its Affiliates lines (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Car has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to the settlement found in the Casualty Schedule attached as Schedule B less rental paid in advance but not earned as a result of such Casualty Occurrence. Lessor shall notify Lessee if a Car suffers a Casualty Occurrence on a line other than that of Lessee or its Affiliates and rental shall cease as of the date of occurrence. Upon the making of

such payment by the Lessee in respect of a Car, the rental for such Car shall cease to accrue as of the date of such payment, the term of this Lease as to such Car shall terminate and the Lessee shall be entitled to ownership and possession of any such Car or the remains thereof.

Except as hereinabove in this paragraph 8 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Car after delivery to and acceptance thereof by the Lessee hereunder.

9. Report and Inspection. On or before February 1 in each year, commencing with the Calendar year 1988, the Lessee will furnish to the Lessor and the Lender (a) an accurate statement setting forth as of the preceding December 31 the amount, description and numbers of all Cars then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Cars that have suffered a Casualty Occurrence during the preceding calendar year and (b) such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request. The Lessor and the Lender, at their sole cost and expense, shall have the right by their agents, to inspect the Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Lender may request during the continuance of this Lease.

10. Compliance with Laws and Rules; Maintenance; Insurance and Indemnification.

(a) Warranties. The Lessor makes no warranty or representation, either expressed or implied, as to the design, compliance with specifications, or as to the quality of the material, equipment or workmanship in, the Cars delivered to the Lessee hereunder, and THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE, OR AS TO CONDITION, COMPLIANCE WITH SPECIFICATIONS, QUALITY OR (EXCEPT AS SET FORTH IN PARAGRAPH 2 HEREOF) AS TO TITLE TO THE CARS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CAR, OR COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor does, however, warrant that the Cars will be acceptable for use in hauling coal, coke, iron ore, stones or aggregates.

(b) Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Lessor and Lender, to comply in all respects with all laws of the jurisdictions in which operations involving any Car subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative,

executive, administrative or judicial body exercising any power or jurisdiction over any such Car, to the extent such laws and rules affect the operations or use of such Car; and in the event such laws or rules require the alteration of any such Car, the Lessee will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

(c) Maintenance Services. During the term of this Agreement, commencing with the Effective Date with respect to each Car, Lessor shall perform or cause to be performed maintenance and repair work necessary to maintain the Cars in Good Operating Condition ("Maintenance Services") in conformity with all applicable laws and regulations including the AAR Code of Interchange Rules and FRA Railroad Freight Car Safety Standards, 49 CFR Part 215, as amended, except for the following:

(1) repairs required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(2) repairs required because of damage caused to the Cars by any corrosive or abrasive substance except coal, coke, iron ore or aggregates loaded therein or used in connection therewith; or

(3) repairs required because of excessive, unusual or avoidable damage caused to the Cars by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or

(4) repairs required because of excessive or unbalanced loading; or

(5) repairs required because of damage to safety appliances.

If repairs or alterations to the Cars not presently contemplated by the parties are required by any governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars, Lessor shall make such repairs or alterations unless the reasonably estimated costs thereof exceed 10% of the then applicable Casualty Value of the affected Cars pursuant to Schedule B hereto, in which event, Lessor may in its reasonable judgment based upon the cost and economic value of such repairs or alterations, declare this Lease terminated for those Cars so affected as of the date such repairs or alterations are required as a condition to use of the Cars by

Lessee.

If Cars in possession of Lessee are in need of repairs for which Lessee is responsible hereunder and are not otherwise covered by paragraph 10(f), Lessee shall contact Lessor and advise, at Lessee's sole option, whether Lessee desires to perform such repairs or have such repairs performed at its expense. If Lessee decides not to repair such Cars, Lessor will either repair the Cars or subcontract for the repairs. Lessee shall be responsible only for the invoice price, if repairs are subcontracted, or for actual costs (but not to exceed AAR costs) if performed by Lessor.

Lessee will make the Cars available to Lessor at the Repair Shop or at any other facility specified by Lessor at any reasonable time for the purpose of repairs. Lessee shall make Cars available for inspection or maintenance in accordance with its operating convenience and at its own expense. Lessee shall as promptly as practical deliver Cars requiring repairs which Lessor is required to make to the Repair Shop. Lessee shall pay all transportation charges for moving any Car to the Repair Shop or such repair or inspection facility if such facility is located on the lines of Lessee or its Affiliates and if the mileage incurred in the movement does not exceed the mileage from point of origin (but only if on the lines of Lessee or its Affiliates as presently constituted) to the Repair Shop plus 200 miles. Lessor shall pay all other transportation charges. Rent shall abate for any Car requiring Lessor responsible repairs or inspection forty-eight hours after the Car is delivered to a repair facility as specified herein; rent shall resume as of the date that such Car is returned to the Lessee in Good Operating Condition.

In the case of damage caused to any of the Cars which is the responsibility under AAR Rules of a railroad other than Lessee or its Affiliates and not repaired by such railroad, Lessor will perform the necessary repairs and will prepare and submit such documents as are necessary to recover the cost of such repair in accordance with AAR Rules and will perform all necessary administrative tasks in connection with such counter-billing. Lessor will be solely entitled to any sum so recovered. Lessee is not responsible for the payment of the foregoing repairs.

Lessee will review any suggestions made by Lessor regarding operating conditions that might be causing undue and avoidable wear or damage to the Cars and to implement those suggested changes that are reasonable under the circumstances.

Neither party to this Agreement will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Cars without the other party's written consent.

Lessor reserves the right to retire any car that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Car retired by Lessor as of the date on which it is retired or when such Car is delivered to the Repair Shop, whichever occurs first.

(d) Other Services. During the term of this Agreement, Lessor shall not be required to perform or cause to be performed any services with respect to the Cars other than Maintenance Services.

(e) Performance of Services by Others. Lessor may from time to time subcontract with others to perform Maintenance Services, but such subcontracts shall not relieve Lessor of its obligation hereunder to perform such Services.

(f) Performance of Services by Lessee. Lessee may perform, at Lessor's expense, the following running repairs to the Cars: (1) any repair not exceeding to an unloaded Car; (2) any repair to correct an FRA or AAR defect that would prohibit or in Lessee's reasonable opinion consistent with industry standards would render unsafe the moving of the Cars to the Repair Shop; and (3) any repairs not exceeding to a loaded Car that can be performed without transfer of the load.

(g) Additions. Any and all additions to any Car and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Car and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Car.

(h) Insurance. The Lessee will at all times during the term of this Lease, at its own expense, cause to be carried and maintained insurance in respect of the Cars in amounts and against risks customarily insured against by railroad companies on similar equipment; and in any event in amounts and against risks comparable to those insured against by the Lessee on similar equipment owned by it.

(i) Indemnity. The Lessee agrees to indemnify and save harmless the Lessor and Lender against any charges or claim made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's negligence or as otherwise provided herein) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the use, operation, condition, delivery, rejection, storage or return of, any Car until such Car is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor and Lender against

any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's negligence and otherwise provided herein) in connection with the operation, use, condition, possession or storage of such Car resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

Notwithstanding the foregoing, Lessor shall indemnify and hold Lessee harmless from and against any and all losses or claims (except those listed below) to the extent such arise out of the negligence, recklessness, or willful misconduct of Lessor in performing Maintenance Services under this Agreement, but excluding such losses for which (1) a repair shop not operated under the direction of Lessor (2) a repair shop approved by Lessee to perform work for Lessor in the event of force majeure events or circumstances or (3) any hauling railroad is responsible under any law, rule, regulation, ordinance or applicable rule of the AAR. "Losses" shall not include counsel fees of Lessee. Regarding any losses or claims, Lessee shall use its best efforts to mitigate damages and shall permit Lessor to conduct an investigation, in such manner and at such place as Lessor may reasonably request, of the facts upon which any such claims are made. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

(j) Reports. The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by the Lessor, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Cars or the leasing of the Cars to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

(k) Disputes. If there is any dispute as to who is responsible for repairs to any Car, the completion of such repairs by a party shall not constitute an admission of responsibility but instead such party may still assert its claims that the other party was responsible.

11. Return of the Cars Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Car, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Car to the Lessor upon such storage tracks of the Lessee or its Affiliates as the Lessor may reasonably designate. The Lessee shall permit the Lessor to store such Car on such tracks free of



charge for a period not exceeding ninety days after such expiration and shall transport the same to St. Louis, Missouri or other mutually agreed interchange point. The movement and storage of such Car shall be at the expense and risk of the Lessee if the Lessor has given movement and storage instructions within the above ninety-day period; provided, however, that if the Lessor instructs the Lessee to store such Car for a period beyond ninety days after the expiration of this Lease with respect to such Car, such additional storage shall be at the expense and risk of the Lessor. If no movement instructions were given by the Lessor within such ninety-day period, the movement and storage of any Car after such ninety-day period shall be at the expense and risk of the Lessor. Storage charges of \$2.50 per Car per day shall be paid by the Lessor to the Lessee for all Cars stored on Lessee's tracks at Lessor's expense or stored due to Lessor not requesting that movement to an interchange point be commenced prior to the expiration of the ninety-day period. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Car, to inspect the same at such reasonable time or times as the Lessee shall agree to.

The assembling, delivery, storage and transporting of the Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Cars.

12. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

(a) default shall be made in the payment of any part of the rental provided in paragraph 4 hereof and such default shall continue for ten days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Cars, or any thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or ex-

tension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

then, in any such case, the Lessor, at its option may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Cars for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Car which represents the excess of the then present value of all rentals for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Car over the then present value of the then fair rental value of such Car for such period computed by discounting to the date of such termination rentals which

the Lessor reasonably estimates to be obtainable for the use of the Car during such period, such present value to be computed in each case on a basis of a 13% per annum discount, compounded annual from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13. Return of Cars Upon Default. If this Lease shall terminate pursuant to Paragraph 12 hereof, the Lessee shall forthwith deliver possession of the Cars to the Lessor. The condition of the Cars upon such return shall be as required pursuant to Paragraph 10 hereof. For the purposes of delivering possession of any Car or Cars to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Cars upon such storage tracks of the Lessee or its Affiliates as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Cars on such tracks for a period of not exceeding six months at the risk of the Lessee, and

(c) transport the same, at any time within such six-month period, to any place on the lines of railroad operated by the Lessee or any of its Affiliates or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The

assembling, delivery, storage and transporting of the Cars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Cars.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Car to the Lessor, to demand and take possession of such Car in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Car. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

14. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Cars during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Paragraphs 7, 10 and 12) shall inure to the benefit of the Lessor's assigns (including the Lender). Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease any one or more of the Cars or assign this Lease to any one or more of the Lessee's Affiliates, or with the prior written consent of the Lessor and the Lender sublease the Cars to third parties; provided, that (i) such sublease or assignment shall provide that the subject Cars shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor and the Lender with 10 days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the Security Documents and the interests of the Lessor and the Lender; and (iv) no such sublease or assignment shall relieve Lessee of its obligation hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any

assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Car, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Car in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Car and all deductions allowable to Lessor with respect to each Car will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within 30 days after receipt of a written demand therefor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Paragraph 14) or encumber its leasehold interest under this Lease in the Cars or any of them (except to the extent that the provisions of any existing mortgage on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof); and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Cars) which may at any time be imposed on or with respect to any Car or the interest of the Lessor, the Lender or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor and the Lender, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except to the extent permitted by the provision of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Cars and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any of its Affiliates, or upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Cars upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of the Lease.

Nothing in this Paragraph 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Cars or possession of the Cars to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the

property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor and the Lender, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Paragraph 18 hereof).

In connection with any sublease or assignment by Lessee under this Paragraph 14, whether or not Lessee is required to obtain the consent of the Lessor and Lender to any such transaction, Lessee agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with the 49 U.S.C. 11303 in order to protect the interest of the Lessor and Lender in and to the Cars under this Lease and the Security Documents.

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Car to service involving the operation and maintenance thereof outside the United States of America and that during such term of any Car outside the United States of America will be limited to incidental and temporary use in Canada.

15. Right of First Refusal. If Lessor shall at any time up to the last day of the term hereof desire to transfer or dispose of some or all of the Cars, it shall give notice thereof to Lessee. In such event, the Lessee shall have the option, exercisable by written notice sent within thirty (30) days (but not later than the last day of the term hereof) after receipt of said notice, to purchase the Cars so offered upon the same terms and at the same price as the terms and the price specified in the notice. Such option shall not be exercisable unless the Lessee shall exercise the option with respect to all of the offered Cars.

16. Opinions of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that:

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303; no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Cars.

At the same time as delivery of the foregoing opinion of counsel for the Lessee, the Lessor will deliver to the Lessee the written opinion of counsel for the Lessor, in scope and substance reasonably satisfactory to the Lessee and its counsel, substantially to the effect set forth in subparagraphs (a) through (c) above with respect to the Lessor, including a statement that this Lease is binding upon both parties in the HM Joint Venture in accordance with its terms and can be enforced by Lessee against the assets of each joint venturer, jointly and severally as well as their successors or assigns.

17. Recording. Prior to the delivery and acceptance of the Cars, and in connection with any sublease or assignment permitted by Paragraph 14 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord and redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Lender, for the purpose of proper protection to the satisfaction of the Lessor of its title to the Cars or for the purposes of carrying out the intention of this Lease or to maintain to the satisfaction of the Lender the security interest of the Lender in and to this Lease and the Cars under the Security Documents.

18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: c/o Helm Equipment Leasing Corporation  
One Embarcadero Center  
Suite 3320  
San Francisco, CA 94111

If to the Lessee: CSX Transportation, Inc.  
Equipment Group - Treasury  
100 North Charles Street  
Baltimore, MD 21201

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Copies of each such notice shall be given to the Lender at:

First National Bank of Louisville  
P.O. Box 36040  
Louisville, KY 40232  
Attention: Mr. J. E. Vittitow  
Senior Vice President

19. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Cars and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

21. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

22. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

23. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of California; provided, however, that the parties shall be entitled to all rights conferred by U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in



their respective names as of the date first above written.

SEAL

Attest:

Charles D Barnett

Title: Secretary

By: HM JOINT VENTURE  
MANSBACH REALTY COMPANY,  
joint venturer

By: Gerald Mansbach SEAL

Title: PRESIDENT

By: HELM EQUIPMENT LEASING CORPORATION,  
joint venturer

Attest:

\_\_\_\_\_  
Title: \_\_\_\_\_

By: Donald R. Ellis

Title: Executive Vice President

Attest:

John P. Hegnrich  
Title: Asst. Corp. Secretary

CSX TRANSPORTATION, INC.

By: Douglas

Title: Vice President - Equipment Group

their respective names as of the date first above written.

HM JOINT VENTURE  
By: MANSBACH REALTY COMPANY,  
joint venturer

Attest:

\_\_\_\_\_

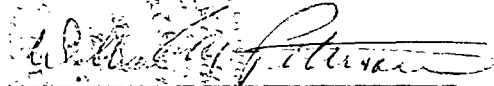
Title: \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

By: HELM EQUIPMENT LEASING CORPORATION,  
joint venturer

Attest:



Title: SECRETARY

By \_\_\_\_\_

Title: \_\_\_\_\_

CSX TRANSPORTATION, INC.

Attest:

\_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Title: Vice President - Equipment Group

STATE OF  
COUNTY OF

)  
) ss.  
)

On this 22 day of August, 1986, before me personally appeared David R. Exles + Gerald W. Wamsley to me personally known, who, being by me duly sworn, says that he is Executive Vice President + President respectively of Holm Equipment Leasing Corporation + Home Tech, Inc. that said instrument was signed and sealed on behalf of said corporations by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporations on behalf of Holm Joint Venture.

My Commission Expires:

1/8/89

Lee Ann Vignari  
NOTARY PUBLIC

[Notarial Seal]

STATE OF MARYLAND  
CITY  
COUNTY OF BALTIMORE

)  
) ss.  
)

On this 20th day of AUGUST, 1986, before me personally appeared DOUGLASS W. LIST, to me personally known, who being by me duly sworn says that he is a Vice President - Equipment Group, that said instrument was signed and sealed on behalf of CSX Transportation, Inc. by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires:

7-1-90

Welan S. Klein  
NOTARY PUBLIC

[Notarial Seal]

SCHEDULE A

<u>Existing Car Numbers</u>	<u>Maximum Number of Cars</u>	<u>New Car Numbers</u>
UP 36000 - 37199	940	HELX 36000 - 37199
MP 580000 - 581999	1300	HELX 580000 - 581999

SCHEDULE B

<u>Payment Date</u>	<u>Casualty Value*</u>
Interim Period	\$
July 1, 1987	
January 1, 1988	
July 1, 1988	
January 1, 1989	
July 1, 1989	
January 1, 1990	
July 1, 1990	
January 1, 1991	
July 1, 1991	
January 1, 1992	

\*Assumes rental payment has been made.

# JOINT INSPECTION CERTIFICATE

DATE OF DEFECT CARD \_\_\_\_\_ COMPANY ISSUING: \_\_\_\_\_

LOCATION \_\_\_\_\_ DATE OF PREPARATION: \_\_\_\_\_

THE UNDERSIGNED HAVE PERSONALLY INSPECTED (INITIALS) \_\_\_\_\_

CAR NO. \_\_\_\_\_ (KIND) \_\_\_\_\_ AND FIND IT TO BE IN THE FOLLOWING CONDITION:

[illegible]

SIGNATURE: \_\_\_\_\_ INSPECTOR FOR: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ INSPECTOR FOR: \_\_\_\_\_

**RULE 108 HANDLING:**

COMPLETE REPAIRS CAN <input type="checkbox"/> / CANNOT <input type="checkbox"/> BE MADE		NECESSARY <input type="checkbox"/> / NOT NECESSARY <input type="checkbox"/> TO LOAD CAR ON OTHER EQUIPMENT		DATE BUILT:	LIGHTWEIGHT
ESTIMATED COST OF PERMANENT REPAIRS TO BODY ONLY:	LABOR \$	MATERIAL \$	TOTAL \$		
ESTIMATED COST OF TEMPORARY REPAIRS:	LABOR \$	MATERIAL \$	TOTAL \$		